

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 349 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

KAMDHENU SEEDS PVT. LTD.

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Appearance:

MR KC SHAH, APP, for Appellant

MR KB PUJARA for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/09/98

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ORAL JUDGEMENT

1. A complaint was lodged by Agricultural Inspector, Himatnagar, against the present respondent respondents alleging breach of provisions of Sections 6 and 7 read with Section 19 of the Seeds Act, 1966. It was alleged

that respondent No.1-company, headed by respondent No.2, manufactures hybrid Bajra seeds MH 179 (certified) and respondents No.3 and 4 marketed the same in breach of the above provisions. The complainant-Agricultural Inspector had collected samples in presence of Panch witnesses and had sent the same to the Seed Analyst at Gandhinagar for ascertaining the genetic purity of the said seeds and, as per the report of the said analyst, it was found that only 09.70% of the sample were found to conform to the standards whereas 90.30% of the seeds were not to conform to the standards prescribed for the purpose. As such, the complaint came to be lodged, witnesses examined and after considering the evidence on record, the learned Magistrate came to a conclusion that the prosecution had failed to prove the charge against the accused-respondents. Being aggrieved by the said judgment and order, the State has preferred the present appeal.

2. Mr. K.C. Shah, learned Additional Public Prosecutor, has assailed the judgment and order of the learned trial Magistrate on the ground that the learned Magistrate has committed an error in evaluating the evidence. The report of the Seed Analyst is neglected. He submitted that the learned Magistrate has erred in relying on a copy produced on record by defence showing that the same seed purchased from Nadiad has been certified to meet the required standards and, therefore, a doubt is created in the prosecution case. Mr. Shah, therefore, submitted that the judgment and order of acquittal may please be set aside by allowing the appeal.

3. On the other hand, Mr. K.B. Pujara, learned advocate appearing for the respondents, submitted that the judgment and order impugned in this appeal is just, legal and proper. The learned Magistrate has considered all aspects relevant for coming to the conclusion. While drawing attention of this Court towards the record and provisions of law, Mr. Pujara submitted that the accused persons are alleged to have committed breach of sections 6 and 7 of the Seeds Act and are charged to be punishable under Section 19 of the said Act. If the provisions are seen, they only give power to the Government to specify minimum limits of germination and purity, etc. and powers to regulate the sale of seeds of notified kinds or varieties. Mr. Pujara submitted that the prosecution has not brought on record any such rule or notification specifying minimum limits for the hybrid Bajra seed or to show that hybrid Bajra seed is included in the list that may have been published by the Government under Section 7 of the said Act regulating sale and, therefore also, the

prosecution cannot be said to have proved the charge against the accused apart from the infirmities that are noticed by the learned Magistrate of not examining the Seeds Analyst and of considering that the same product manufactured by accused No.1 and 2 under same lot number purchased from another dealer is found to conform to the required standards and, therefore, submitted that the judgment and order of acquittal recorded by the learned Magistrate cannot be considered as patently illegal or erroneous or palpably unsustainable. He, therefore, urged that his appeal may be dismissed confirming the impugned judgment and order.

4. This Court is taken through the entire record and proceedings before it by the learned Additional Public Prosecutor, Mr. Shah as well as Mr. Pujara.

5. When pointedly asked, Mr. Shah was not in a position to show from the record or otherwise, any notification prescribing minimum limits of germination and purity that may have been specified by the State Government or authority concerned under Section 6 of the Seeds Act nor was he in a position to show anything on record or otherwise, or any rule indicating that hybrid Bajra seed is notified to be a variety for which any notification regulating the sale of it is issued by the Government and, in absence of any such basic material, it can never be concluded that breach of Section 6 or 7 of the Seeds Act is committed. When these two provisions are only enabling provisions, it has to be shown that powers under these provisions were exercised by the State or the authority concerned, then only breach can be established. That having not been done, the prosecution case is bound to go overboard.

6. Apart from this, it is to be noted that the Panch witnesses in whose presence the samples are alleged to have been taken have not supported the prosecution case. So, factually also, the prosecution case gets weakened. It only hangs on deposition of the complainant. Further, as rightly observed, the sample is taken in absence of respondents No.1 and 2, the manufacturers, who are later on charged with the offence. The collection of samples also, therefore, rolls under a cloud of suspicion or doubt.

7. Further, it is found that Ex.40 and 41 produced in defence by the respondent before the learned Magistrate indicate that samples of hybrid Bajra MH 179 (certi.) collected from Nadiad were found to conform to the standards prescribed. The manufacturers of those

seeds are respondents No.1 and 2. It is clear from Ex.40 and 41 that they were manufactured by "Kamdhenu Seeds" and were of lot number 179, for which the present prosecution appears to have been launched against the respondents. It is nobody's case that there was any manipulation to the container. The sample is collected from a sealed packet containing the tag of certification and, therefore, a reasonable doubt can be said to have been raised by the defence. Failure on part of the prosecution to examine the Seeds Analyst, also affects the prosecution case, as the standards which are expected and under what provisions, have ramined unrevealed. As a necessary consequence, therefore, it cannot be said that the learned Magistrate has committed any error in concluding that the prosecution had failed to prove, beyond reasonable doubt, the case against the accused. It also cannot be said that the reasons adopted and conclusions arrived at by the learned Magistrate are patently erroneous, illegal or palpably unsustainable nor can it be said that the only conclusion that the learned Magistrate could have arrived at was that of conviction. This Court, therefore, is not inclined to interfere with the impugned judgment and order. The appeal only merits dismissal and is, therefore, dismissed.

[ A.L. DAVE, J. ]

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